

Proposed Rules for Privacy and Public Access to Court Records in Montana

Purpose

Section 1.00 - Purpose of these Rules

The purpose of these rules is to provide a comprehensive framework for a policy on public access to court records. These rules provide for access in a manner that:

- (1) Maximizes accessibility to court records,
- (2) Supports the role of the judiciary,
- (3) Promotes governmental accountability,
- (4) Contributes to public safety,
- (5) Minimizes risk of injury to individuals,
- (6) Protects individual privacy rights and interests,
- (7) Protects proprietary business information,
- (8) Minimizes reluctance to use the court to resolve disputes,
- (9) Makes most effective use of court and clerk of court staff,
- (10) Provides excellent customer service, and
- (11) Does not unduly burden the ongoing business of the judiciary.

The rules are intended for 1) litigants, 2) those seeking access to court records, and 3) judges and court and clerk of court personnel responding to requests for access.

Who Has Access

Section 2.00 – Who Has Access under these Rules

Every member of the public will have the same access to court records as provided in these rules, subject to the provisions of section 4.30(b) and 4.40(c).

In the official performance of their duties, the following people or entities, because of their employment or relationship to the court, shall not have their access restricted under Sections 4.0 through 4.6:

- (a) court or clerk of court employees;

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- (b) people or entities, private or governmental, who assist the court in providing court services;
- (c) agencies whose access to court records is defined by another statute, rule, order or policy; and
- (d) the parties to a case or their lawyers regarding access to the court record in their case.

Access to What

Section 3.00 – Definitions

Section 3.10 – Definition of Court Record

For purposes of these rules:

(a) “Court record” includes:

- (1) Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
- (2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and
- (3) Information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) “Court record” does not include:

- (1) Other non-court records maintained by the public official who also serves as clerk of court.
- (2) Information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in section 3.10(a)(1).

Section 3.20 – Definition of Public Access

“Public access” means that the public may inspect and obtain a copy of the information in a court record as provided by Montana law.

Section 3.30 – Definition of Remote Access

“Remote access” means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

Section 3.40 – Definition of “In Electronic Form”

Information in a court record that is defined in Section 3.10 includes: (a) electronic representations of text or graphic documents; (b) an electronic image, including a video image, of a document, exhibit or other thing; (c) data in the fields or files of an electronic database; or (d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

Section 4.00 – Applicability of the Rules

These rules apply to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

Section 4.10 – General Access Rule

- (a) Information in the court record is accessible to the public except as prohibited by section 4.50 or section 4.60(a).
- (b) There shall be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication shall not disclose the content of the information protected.
- (c) A local court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided for in these rules, nor provide greater access than that provided for in these rules.

Section 4.20 – Court Records in Electronic Form Presumptively Subject to Remote Access by the Public

The following information in court records should receive the highest priority for remote access by the public if available in electronic form, unless public access is restricted pursuant to sections 4.50 or 4.60(a):

- (a) Litigant/party indexes to cases filed with the court;
- (b) Listings of new case filings, including the names of the parties;
- (c) Register of actions showing what documents have been filed in a case;
- (d) Calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;
- (e) Judgments, orders, or decrees in a case and liens affecting title to real property.

Section 4.30 – Requests for Bulk Distribution of Court Records

Bulk distribution is defined as the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

- (a) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under section 4.10 and not prohibited by state law.
- (b) A request for bulk distribution of information not publicly accessible can be made to the court where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information pursuant to this subsection the requestor must comply with the provisions of section 4.40(c).

Section 4.40 – Access to Compiled Information from Court Records

- (a) Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.
- (b) Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available pursuant to section 4.20 or in an existing report. The court shall compile and provide the information if it determines that the resources are available to compile the information. The court may delegate to its staff or the clerk of court the authority to make the initial determination as to whether to provide compiled information.
- (c) Compiled information that includes information to which public access has been restricted may be requested by any member of the public pursuant to Section 4.6.

The request shall:

- 1) identify what information is sought,
- 2) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.
- 3) if the request is granted, the court may require the requestor to sign a declaration that:
 - i. The data will not be sold or otherwise distributed, directly or

indirectly, to third parties, except for journalistic purposes,

- ii. The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and/ or
- iii. The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

Section 4.50 – Court Records Excluded from Public Access

The following information in a court record is not accessible to the public:

- (a) Information that is not to be accessible to the public pursuant to state law; and
- (b) Information that is not to be accessible to the public pursuant to federal law.
- (c) **The following information is not available without leave of the court:**
 - 1) Complete social security numbers;
 - 2) Complete financial account numbers;
 - 3) Full names of minor children, unless state law requires a child's name to be accessible to the public;
 - 4) Full birth dates of any person.

(d) It is the responsibility of the filing party to comply with these rules to protect private information.

Section 4.60 - Requests to Prohibit Public Access to Information In Court Records Or To Obtain Access to Restricted Information

- (a) A **motion or** request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, **the clerk of court**, or on the court's own motion. The court must decide whether there are sufficient grounds to prohibit access by determining whether the demand of individual privacy clearly exceeds the merits of public disclosure.

The court should require that a party file a motion to protect the information, with the information to be protected in a sealed envelope lodged, but not filed, with the court. If the court grants the **motion or** request, the information will be filed under seal. If the court denies the request, the party will have the option to file the information with knowledge that it will be accessible to the public.

- (b) In restricting access the court will use the least restrictive means that will achieve the purposes of the access rules and the needs of the requestor.

A request to obtain access to information in a court record to which access is prohibited under section 4.50 or 4.60(a) of these rules may be made by any member of the public or on the court's own motion upon notice as provided in subsection 4.60(c). The court must decide whether there are sufficient grounds to prohibit access by determining whether the demand of individual privacy clearly exceeds the merits of public disclosure. When the request is made for bulk or compiled information to which public access has been prohibited under Section 4.50 and 4.60 (a) of these rules, the court should consider the actions provided in section 4.40 (c) when making such a determination.

- (c) The following is the process for making requests described in 4.50(a) and 4.50 (b) where that process is not provided in statute or case law. The request shall be made by a written motion to the court. The requestor will give notice to all parties in the case except as prohibited by law. The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under section 4.60(a), the court will provide notice to the individual or entity that requested that access be prohibited either itself or by directing a party to give the notice.

When Accessible

Section 5.00 – When Court Records May Be Accessed

- (a) Court records will be available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under these rules will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance.
- (b) Upon receiving a request for access to information the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time.

Fees

Section 6.00 – Fees for Access

- (a) Disclosure or distribution of documents is subject to the payment of applicable**

fees as set by statute.

(b) The court may charge a fee for bulk distribution or compiled information in accordance with state law. To the extent that public access to information is provided exclusively through a vendor, the court will ensure that any fee imposed by the vendor for the cost of bulk and compiled information is reasonable and covers the vendor's actual costs.

Obligation of Vendors

Section 7.00 -- Obligation of Vendors Providing Information Technology Support to a Court to Maintain Court Records

- (a) If a court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of these access rules. For purposes of this section, “vendor” includes a state, county or local governmental agency that provides information technology services to a court as well as private contractors.
- (b) By contract the vendor will be required to comply with the requirement of sections 8.10, 8.20, 8.30, 8.40 and 8.50 to educate litigants, the public, and its employees and subcontractors about the provisions of the access policy.
- (c) By contract the vendor will be required to notify the court of any requests for compiled information or bulk distribution of information, including the vendor’s requests for such information for its own use. Accordingly, rules 4.30 and 4.40 apply.

Obligation of the Court to Inform and Educate

Section 8.00 – Information and Education Regarding Access Rules

Section 8.10 – Dissemination of Information to Litigants about Access to Information in Court Records

The court will make information available to litigants and the public that information in the court record about them is accessible to the public, including remotely and how to request to restrict the manner of access or to prohibit public access.

Section 8.20 – Dissemination of Information to the Public about Accessing Court Records

The Court will develop and make information available to the public about how to obtain access to court records pursuant to these rules.

Section 8.30 – Education of Judges and Court Personnel about the Access Rules

All Courts and clerks of court shall ensure that their personnel comply with these access rules and respond to requests for access in a manner consistent with the rules.

Section 8.40 – Education About Process to Change Inaccurate Information in a Court Record

All Courts will inform the public of the rules by which the court will correct, expunge or update inaccurate information.

Section 8.50 - Procedure to Correct, Expunge or Update Inaccurate Information

An individual who believes that a case record contains clerical errors may submit a written request for correction to the court, clerk of court, or other custodian who maintains the record, with a copy served on all parties to the case. Such request shall be no longer than two pages in length. The custodian shall promptly do one of the following:

(a) correct a clerical error for which no court order is required: (b) forward the request to

the court to be considered informally; or (c) forward the request to the party or participant who submitted the record containing the alleged clerical error who in turn may seek appropriate relief from the court. Upon forwarding under clause (b), the court may either correct the error on its own initiative or direct that the request will only be considered pursuant to a motion requesting correction. The court's direction may also establish appropriate requirements for a motion. The request for correction authorized in the rule need not be exhausted before other relief is requested.

